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Douglas G. Sykes, his successors and/or assignees

UNITED STATES BANKRUPTCY COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re:

Y. ROGER YU,

Debtor.

Bk. No. 23-50023-MEH

Chapter 13

MOTION FOR RELIEF
FROM AUTOMATIC STAY

Hearing-

Date: February 16, 2023

Time: 2:30 pm

Place: United States Bankruptcy Court

280 South First Street

Courtroom 11

San Jose, CA 95113-3099

VIA VIDEO OR TELECONFERENCE

Douglas G. Sykes, his assignees and/or successors (“**Movant**”), moves the Court for relief from the Automatic Stay provided by 11 U.S.C. Section 362. This motion seeks an Order terminating the Automatic Stay of 11 U.S.C. Section 362 as to moving party (and the Trustee under the Deed of Trust securing moving party's claim) so that moving party (and its Trustee) may take all steps necessary under State or Federal law to commence or complete its foreclosure under the Deed of Trust and thereafter take possession of the subject property located at 1047 Cherry Street, San Carlos, CA 94070 (“**Cherry Street Property**”) which is legally described in the Deed of Trust attached to the Declaration of Douglas G. Sykes (“**Movant’s Declaration**”) as Exhibit “B”.

1 In addition, and if applicable, Lender will seek an order waiving the requirements of
2 Federal Rule of Bankruptcy Procedure 4001(a)(3), and California Civil Code § 2924g(d), so that
3 any foreclosure sale may be held without the applicable waiting period specified therein.

4 This Motion shall be based on these moving papers, the Relief from Stay Information
5 Sheet, Movant's Declaration, the Memorandum of Points and Authorities, and the pleadings and
6 records on file with the Court.

7 In addition, Movant shall seek an order pursuant to 11 U.S.C. § 362(d)(4) so that any
8 order for relief will be binding in any other case under this title purporting to affect the subject
9 property filed within two (2) years of the order for relief.

10 This motion is brought pursuant to 11 U.S.C. Section 362(d)(1) for "cause" and due to the
11 following:

12 1. The failure of Y. Roger Yu ("**Debtor**") to make required payments as set
13 forth in Movant's Declaration. Movant's loan has matured and is all due and payable as of
14 December 1, 2022. Debtor's failure to make required payments provides "cause" for relief from
15 the Automatic Stay in accordance with the ruling of the Bankruptcy Appellate Panel in In re
16 Proudfoot, 144 B.R. 876 (9th Cir. BAP 1992).

17 2. The failure of Debtor to submit required payments to the senior lienholder
18 Mortgage Electronic Registration Systems, Inc., solely as nominee for HSBC Bank USA, N.A.,
19 which also holds a trust deed lien on the subject real property.

20 3. Movant seeks, relief from the Automatic Stay pursuant to 11 U.S.C.
21 Section 362(d)(1) for "cause", as well as pursuant to 11 U.S.C. Section 109(g). The Debtor and
22 his associates filed several frivolous State Court lawsuits, seeking to stall foreclosure of the
23 Cherry Street Property, as well as three other properties. When that failed, the Debtor and his
24 associates filed a total of seven (7) bankruptcy filings to stall the sales. [See Movant's
25 Declaration, paragraphs 9 through 18, Exhibits "C" through "X", respectively.] Movant requests
26 that this Court take judicial notice of the prior bankruptcy filing pursuant to Federal Rule of
27 Evidence Section 201.

1 9. Movant's loan is all due and payable as it fully matured on December 1,
2 2022.

3 In addition, Movant seeks an Order prohibiting Debtor from refilling under any
4 other Chapter of the Bankruptcy Code for a 180-day period after the dismissal of these
5 proceedings, and further that if there is a refilling within the 180-day period from the dismissal
6 of these proceedings, that any such Bankruptcy filing not be deemed to stay or prohibit Movant
7 from proceeding pursuant to this Order.

8 In addition, Movant seeks relief pursuant to 11 U.S.C. Section 362(d)(2) and
9 alleges that in accordance with the information set forth in Movant's Declaration, and due to the
10 Debtor's failure to make required payments, that Debtor does not have any realistic hope for a
11 reorganization, and that there is insufficient equity present in the Cherry Street Property to justify
12 the continuance of the Automatic Stay. The value of the Property is \$850,000.00 and there are
13 liens on the Cherry Street Property totaling approximately \$1,000,769.50.

14 In addition, and in the event that the Court continues the Automatic Stay, Movant
15 will seek adequate protection of its secured interest pursuant to 11 U.S.C. Sections 361 and 362,
16 including a requirement that Debtor reinstate all past arrearages and immediately commence

17 To the extent applicable, Movant will move this Court for relief from the co-
18 debtor stay contained in U.S.C. §1301 and will request that any Order allowing relief from stay
19 against Debtor, or conditioning continuance of the automatic stay against Debtor, be deemed
20 applicable to the co-debtor and the co-debtor stay. (See In re Jimmy Leonard, 307 B.R. 611
21 (E.D.TN 2004) and In re: Pardue, 143 B.R. 434 (E.D. TX 1992)). Furthermore, according to the
22 Court in In re: Jacobsen, 20 B.R. 648 (B.A.P. 9th Cir. 1982), a Debtor should not be entitled to
23 confirm a Chapter 13 plan, without consenting to relief from the co-debtor stay, so that the
24 Creditor can proceed with collecting the deficiency on the loan from the co-debtor, who has not
25 filed for protection under the Bankruptcy Code, where the debt is not provided in the Plan. Here,
26 the borrower is a Trust. The Debtor has filed this bankruptcy and Yolanda Jin has filed the
27 Cherry Street State Court Actions, and the Yolanda Jin Bankruptcies in attempts to stall the
28 foreclosure. [See Movant's Declaration, paragraph 9, Exhibit "C" through Exhibit "I",

1 respectively”.] The Borrower and the Debtor may have an interest in the Cherry Street Property
2 and Yolanda Jin may as well. To the extent it is determined that they do, Movant’s interest
3 would be irreparably harmed by continuation of the stay in accordance with the declaration and
4 evidence submitted herewith. There no value for the estate. Providing the borrower or any third
5 party with the benefit of another stay would be inequitable.

6 Furthermore, Movant will also seek attorneys' fees and costs incurred in bringing
7 the Motion. Movant requests such fees pursuant to the Note and Deed of Trust securing
8 Movant's claim or pursuant to 11 U.S.C. Section 506(b). Post petition attorneys’ fees and costs
9 for the within motion may be added to the outstanding balance of the subject Note pursuant to
10 Travelers Casualty v. Pacific Gas and Electric Co., 549 U.S. 443 (2007).

11 In addition, Movant requests such further relief as is just.

12 In the event neither the Debtor nor Debtor’s counsel or any interested party
13 appears at a hearing on this Motion, the Court may grant relief from the Automatic Stay
14 permitting moving party to foreclose on the Debtor’s the Cherry Street Property which is legally
15 described in the Deed of Trust attached to the Movant’s Declaration as Exhibit "B", under all
16 defaults, including any pre-petition defaults, and thereafter obtain possession of such Property
17 without further hearing, or may enter an order conditioning the continuance of automatic stay.

18 WHEREFORE, Movant prays for judgment as follows:

- 19 1. For an order granting relief from the Automatic Stay, permitting Movant to take all
20 steps necessary under State or Federal law to commence or complete its foreclosure
21 under the Deed of Trust and thereafter take possession of the subject Property
- 22 2. For an order allowing Movant to seek and collect any damages ordered by any Court
23 for the wrongful retention of the subject Property after foreclosure of the subject
24 property.
- 25 3. For an order permitting Movant to offer and provide Debtor with information
26 regarding potential Forbearance Agreement, Loan Modification, Refinance
27 Agreement, or other Loan Workout/Loss Mitigation Agreement, and to enter into
28 such agreement with Debtor.

- 1 4. That any other stays applicable to this Property via the Co-Debtor Stay of 11. U.S.C.
- 2 1301 or Bankruptcy Rule 4001(a)(3), be vacated or waived;
- 3 5. For an order regarding adequate protection of Movant's interest as this Court deems
- 4 proper.
- 5 6. For attorneys' fees and costs for suit incurred herein.
- 6 7. For an order waiving the 14-day stay described in Bankruptcy Rule 4001(a)(3).
- 7 8. For such relief as this Court deems appropriate.
- 8 9. For an order granting relief under 11 U.S.C. § 362(d)(4): If recorded in compliance
- 9 with applicable state laws governing notices of interests or liens in real property, the
- 10 order is binding in any other case under this title purporting to affect the Property
- 11 filed not later than 2 years after the date of the entry of the order by the court, except
- 12 that a debtor in a subsequent case under this title may move for relief from the order
- 13 based upon changed circumstances or for good cause shown, after notice and hearing.
- 14

15 SCHEER LAW GROUP, LLP

16 DATED: February 1, 2023

17 /s/ Reilly D. Wilkinson
18 Reilly D. Wilkinson
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